UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

HOBBY LOBBY STORES, INC.

and Case 20-CA-139745

THE COMMITTEE TO PRESERVE THE
RELIGIOUS RIGHT TO ORGANIZE

GENERAL COUNSEL'S REPLY TO CHARGING PARTY'S
OBJECTIONS TO PROPOSED STIPULATED RECORD

Counsel for the General Counsel ("General Counsel") submits this reply to The Committee To Preserve The Religious Right To Organize's ("Charging Party") objections to the proposed stipulated record and requests that the joint motion to submit a stipulated record be approved over the Charging Party's objections.

I. Procedural History

On June 2, 2015, Hobby Lobby Stores, Inc. ("Respondent") and General Counsel filed a joint motion to submit a stipulated record to the Honorable Administrative Law Judge Eleanor Laws ("ALJ"). This motion included a stipulation of issues presented, signed by Respondent and General Counsel on June 1, and June 2, 2015, respectively, and also a submission of joint exhibits and stipulation of facts signed by the Charging Party, Respondent and General Counsel on May 28, May 27, and June 2, 2015, respectively. On June 2, 2015, Respondent filed a petition to revoke the Charging Party's subpoena and a motion in limine to exclude irrelevant evidence and testimony. On June 3, 2015, the ALJ issued an "Order Setting a Briefing Schedule re: Joint Motion to Submit Stipulated Record to the Administrative Law Judge and Postponing Hearing Indefinitely Pending Ruling on Joint Motion." On June 17, 2015, the Charging Party filed its objections to the proposed stipulated record.

II. The Stipulated Record Adequately Sets Out the Allegations of the Complaint And There Is No Need For A Hearing

The Complaint alleges that Respondent's maintenance of its Mutual Arbitration Agreement ("MAA") and its enforcement of its MAA violate Section 8(a)(1) of the National Labor Relations Act ("Act"). The stipulated record mirrors the Complaint and presents sufficient evidence of undisputed facts, along with the parties' briefs that will be submitted, for the ALJ to decide the issues.

The Charging Party asserts 13 objections, none of which raises material facts or issues that would warrant a hearing. It asserts in its Objection #1 that the stipulated record is inadequate because there are typographical errors in paragraph 4(a) and 4(b) in the stipulation of facts. However, Charging Party's assertion that there should be a comma in between "construction" and "warehouse workers" is incorrect as there is only one job classification of "construction warehouse workers." Regardless, the Charging Party fails to assert why this fact is material and necessitates a hearing.

In Charging Party's Objection #2, it asserts that the stipulated record is inadequate because paragraph 4(b) refers to "team truck drivers" simply as "truck drivers." However, this distinction is immaterial since Respondent admits that it employs team truck drivers and that said drivers transport its products across state lines. Again, the Charging Party fails to assert why this distinction is material and necessitates a hearing.

Furthermore, Charging Party's Objection #3 asserts that the stipulation of facts does not contain any information about employee meetings to determine whether remedial notices could be read in these employee meetings. However, General Counsel never sought a notice reading as a remedy in its Complaint. While the ALJ may consider this as an appropriate form of relief

should she find merit to the Complaint, and General Counsel has no objection to that, establishing this fact is not necessary for the ALJ to recommend such a remedy. It is a compliance issue if at all.

Charging Party's Objections #4-6 discuss whether arbitration is costly and inefficient and whether Respondent's dispute resolution procedure affects interstate commerce.[1] However, these issues are irrelevant and unnecessary in deciding the allegations made in the Complaint. The Complaint raises three issues: 1) whether the MAA and related policies requires employees, as a condition of employment, to waive their right to resolution of employment-related disputes by collective or class action in violation of Section 8(a)(1) of the Act; 2) whether the MAA would reasonably be read by employees to prohibit them from filing unfair labor practice charges with the Board in violation of Section 8(a)(1) of the Act; and 3) whether Respondent's enforcement of the MAA through its motions to compel arbitration is in violation Section 8(a)(1) of the Act. The additional facts that Charging Party is attempting to establish are not pertinent to these issues and therefore do not require a hearing. Where there is no material fact or issue in dispute, the issuance of an ALJ decision based on a stipulated record and Respondent's and General Counsel's briefing will effectuate the purposes of the Act and avoid unnecessary costs and delay. *See Laborers' Local Union 383*, 260 NLRB 1340, Fn 1 (1982) and *Sunrise Hospital Medical Center*, 254 NLRB 1377, 1378 (1981) (where the Board affirmed the Administrative Law Judge's findings to accept the motion for a stipulated record over the Charging Party's objections because the record was complete and sufficient to support findings of fact with respect to all contested allegations of the complaint).

Finally, the Charging Party claims in its Objections #7-13 that the record is inadequate and thus necessitates a hearing because the stipulated record does not include facts concerning

[1] Charging Party and Respondent nevertheless admit that the National Labor Relations Board has jurisdiction with respect to commerce. *See* Stipulation of Fact, p. 5, paragraph 3; Charging Party's Objections to Proposed Stipulated Record, p. 2, Objection #6; and Respondent's Answer to Amended Complaint, p. 2, paragraph 3.

whether Respondent's handbook and an employee's right to engage in protected concerted activity is of a religious nature, and whether the Religious Freedom Restoration Act is applicable to this case. While the Charging Party asserts that these facts do not go beyond General Counsel's theory of the case, Charging Party's Objections #7-13 indeed are outside the scope of General Counsel's Complaint. The Complaint does not allege that the MAA violates the Religious Freedom Restoration Act ("RFRA"), nor has General Counsel asserted a position on whether: 1) an employee's right to engage in protected concerted activities is a religious right or; 2) the RFRA trumps the Federal Arbitration Act ("FAA"). Thus, these objections are well outside the scope of the Complaint and do not necessitate a hearing.

III. Conclusion

Based on the foregoing, the joint motion to submit a stipulated record to the administrative law judge should be approved over the Charging Party's objections as Respondent and General Counsel are of the view that this joint motion which includes a stipulation of issues, a submission of joint exhibits and a stipulation of facts is appropriate to decide the allegations made in the Complaint.

DATED AT San Francisco, CA, this 23rd day of June, 2015.

Respectfully submitted,

/s/ Yasmin Macariola
Yasmin Macariola
Counsel for the General Counsel
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103